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# Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 229.

THE UNITED STATES, APPELLANT,

vs.

JUAN PEDRO CAMOU.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

## STATEMENT OF THE CASE AND ARGUMENT FOR APPELLEE.

WILLIAM HERRING,
ROCHESTER FORD,
*Attorneys for Appellee.*

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-5-'01

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## STATEMENT OF THE CASE AND ARGUMENT FOR APPELLEE.

This case was once before this court (171 U. S., 277), and the validity of the grant settled. It appeared, however, that the land claimed in the petition was slightly in excess of the four sitios which, as this court held, the grant conveyed. The amount of land actually included within the survey made by the Mexican authorities is 20,034.62 acres. Four sitios would be either 17,353.85 acres, or, according to the figures given in U. S. *vs.* Perot, 98 U. S., 428, 17,361.10 acres.

The lower court, by its decree (Rec., p. 273), located within what are termed the exterior boundaries of the grant a tract containing four square leagues, or 17,474.93 acres.

This was done strictly in accordance with the principle announced by this court in Ely *vs.* U. S., 171 U. S., 220, 241, where, referring to what was termed excess, it was said: "If the out-boundaries disclose a square or any rectangular figure, the excess of area suggests simply a carelessness of measurement, and can be corrected by a proportionate deduction in each direction."

The center of the grant (Rec., p. 97) was "at a place where there were some small hills." From this there were measured and counted to the south 200 cords, which ended at the limits of the San Pedro ranch, the monument of which was standing at the time, and which was taken as a common monument between the two grants. From the center 200 cords were measured and counted towards the north, which ended upon the valley where there is a small, rising, calcareous knoll. Returning to the center, there were measured and counted towards the east 50 cords, which ended upon the valley and fronting the Mule mountains. Returning to the center, 50 cords were measured and counted towards the west, which ended upon the same valley, fronting towards the Huachuca mountains. 100 cords were measured from the extremities of the lines running north and south, so as to square the land, and heaps of stones as signs for monuments were placed at the ends of the various measurements.

The proof does not disclose any ambiguity as to the location of this tract of land. The limy peak referred to as the termination of the line run to the north was identified by all the witnesses. Mr. George J. Roskruge, who had lived in Ari-

zona 22 years, and for 20 years had been in the business of surveying and civil engineering (Rec., p. 33), testified (p. 34) that he "found a post in a monument on the summit of a limy hill, which was the north center of the grant as called for in the expediente, and there was no other limy hill in the whole neighborhood. I never saw anything like it in my life before. It is a very peculiar formation. It looked like a lot of burnt lime—calcareous, or whatever you call it. The whole top was covered with a lot of lime formation like cinders. * * * This is the most curious looking hill you ever saw, and there is nothing like it in the whole country" (pp. 41, 207).

Mr. H. O. Flipper, a witness for the government, also identified this monument. He testified (p. 65): "We then came back to the north center monument, on the little limy hill, and went west to the northwest corner."

Mr. Roskruge further testified (pp. 35, 56) that as the south boundary he identified the monuments of the San Pedro grant. As to this he was not contradicted, Mr. Flipper testifying (p. 66) that he "did not examine the San Pedro grant at all." Mr. Flipper further testified (p. 71) that "the north line of the San Pedro grant is north of Hereford," a point which is shown on the map facing page 180 of the record.

The central point is stated by the expediente to be the middle of a line of 100 cords, one end of which fronts the Mule mountains on the east, and the other the Huachuca mountains on the west. It was shown (p. 66) that the Mule mountains do not extend south of the international boundary line, and that the east end of the Huachuca mountains crosses

the line slightly. These Huachuca mountains appear on the map facing page 180.

The location of the monuments on the north line of the San Pedro grant was testified to also by the witnesses Douglass Snyder and Max Marks (pp. 54, 56).

On the second trial of this case Mr. Roskruge stated (pp. 205, 207) that when first looking for the center monument he had a copy of the expediente, which incorrectly stated that "the survey was begun from a point fixed as a center where there was some small mountains," and that he was looking for little mountains, but did not find them. He testified (p. 207) that in the vicinity of the center, as now fixed by him upon the map offered in evidence (facing p. 236), there were natural objects, small rolling hills, answering to the call for the center, and he further testified (p. 211) that he arrived at the central point by taking a point midway between the two extreme points—the north line of the San Pedro ranch and the limy hill.

The lower court, as above stated, by its decree adopted a parallelogram which made a proportionate reduction in each direction from the center. This is either exactly or almost exactly in accordance with the preliminary survey of this claim, which had been made as early as the year 1880 by the surveyor general of Arizona, a copy of which preliminary survey faces page 234 of the record.

We are unable to see how the decree is objectionable in any respect. It seems to conform exactly to the rule laid down by this court, and we submit that it should be affirmed.

WILLIAM HERRING,
ROCHESTER FORD,
*Attorneys for Appellee.*